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*Attorneys for Consolidated Edison
Development, Inc.*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric
Company
☐ Affects both Debtors

** All papers shall be filed in the Lead,
Case, No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11 (Lead Case) (Jointly Administered)

**CONSOLIDATED EDISON
DEVELOPMENT INC.'S LIMITED
OPPOSITION TO MOTION OF THE
UTILITY FOR LIMITED RELIEF FROM
THE AUTOMATIC STAY TO APPEAL
CERTAIN MATTERS PENDING BEFORE
THE FEDERAL ENERGY REGULATORY
COMMISSION**

Date: June 26, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: June 19, 2019
4:00 p.m. (Pacific Time)

Consolidated Edison Development, Inc. ("Con Edison"), through its counsel, submits this
limited opposition to the *Motion of the Utility for Limited Relief From the Automatic Stay to Appeal*

1 *Certain Matters Pending Before the Federal Energy Regulatory Commission* [Doc. No. 2359] (the
2 “Utility Motion”)¹ filed by PG&E Corporation and Pacific Gas and Electric Company (the “Utility”
3 and, together with PG&E Corporation, the “Debtors”).

4 **I. LIMITED OPPOSITION**

5 The Utility Motion should be granted **only if** Con Edison and the other PPA Counterparties
6 are granted reciprocal stay relief.

7
8 As explained in the *Motion of Consolidated Edison for Relief from the Automatic Stay to*
9 *Intervene and Participate in Appeal of FERC Orders* [Doc. No. 2403] (the “Con Edison Motion”),²
10 Con Edison has a direct and legally protected interest in any appeal of the FERC Orders. If the
11 Utility obtains stay relief and appeals the FERC Orders, but Con Edison remains stayed from
12 participating in that appeal, then Con Edison’s interests will be prejudiced significantly. Namely,
13 Con Edison’s right to the Utility’s continued performance under its PPAs could be threatened
14 without Con Edison having had the opportunity to defend its interests at the appellate level. Such
15 an unjust result is contrary to the spirit of the automatic stay, which serves primarily to protect
16 debtors and their estates—not give them an undue advantage over other parties in litigation.

17
18 The Debtors should not be permitted to use the automatic stay as a sword, rather than a
19 shield, to deny Con Edison the ability to assert its rights and claims in any forum—an entirely
20 inequitable result. *See Anchev v. 335 West 38th St. Coop. Corp. (In re Anchev)*, 2009 Bankr. LEXIS
21 906, *6 (Bankr. S.D.N.Y. Apr. 15, 2009) (noting it would be inequitable to permit debtor, as
22 plaintiff in nonbankruptcy suit, to utilize stay as sword against defendants in that action) (citing *In*
23 *re Jandous Elec. Const. Corp.*, 106 B.R. 48, 50 (Bankr. S.D.N.Y. 1989)); *cf. Lake Cty. Grapevine*

24
25
26
27 ¹Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Utility Motion.

28 ² For the sake of brevity, Con Edison incorporates by reference all arguments made in the Con Edison Motion.

1 *Nursery Operations LLC v. Am. Nursery LLC*, No. C 09-4877 VRW, 2010 WL 11586939, at *1
2 (N.D. Cal. Nov. 22, 2010) (“A section 362(a) stay provides a debtor with ‘breathing room,’ but
3 does not prevent ‘persons whom the bankrupt has sued from protecting their legal rights.’”) (citations omitted)).
4

5
6 Therefore, Con Edison opposes the Utility Motion only to the extent that the Debtors request
7 stay relief without reciprocal stay relief being granted to Con Edison and the other parties to the
8 FERC Proceeding.

9 II. CONCLUSION

10 For the reasons stated herein and in the Con Edison Motion, Con Edison respectfully
11 requests that the Court: deny the Utility Motion unless it also grants Con Edison and other PPA
12 Counterparties that were parties to the FERC Proceeding reciprocal stay relief (whether by separate
13 order granting the Con Edison Motion or within the same order granting the Utility Stay Motion)
14 and grant such other and further relief as is just and proper.
15

16
17 Dated: June 19, 2019

TROUTMAN SANDERS LLP

By: /s/ Hugh M. McDonald

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